

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRUCE DAVIS,

Petitioner,

2:03-cv-0426-GEB-GGH-P

vs.

K. PROSPER, et al.,

Respondent.

ORDER

Petitioner has timely filed a notice of appeal of this court's August 22, 2005, denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate of appealability must "indicate

1 which specific issue or issues satisfy" the requirement. Id.  
2 § 2253(c) (3) .

3 A certificate of appealability should be granted for  
4 any issue that petitioner can demonstrate is "'debatable among  
5 jurists of reason,'" could be resolved differently by a different  
6 court, or is "'adequate to deserve encouragement to proceed  
7 further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir.  
8 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).<sup>1</sup>

9 Petitioner has made a substantial showing of the denial  
10 of a constitutional right in the following issues presented in  
11 the instant petition: 1) petitioner's motion to sever was denied  
12 in violation of his right to due process; 2) petitioner was  
13 denied his right to present evidence and confront witnesses in  
14 violation of the Sixth Amendment; 3) inherently suggestive  
15 photographic identification evidence was admitted in violation of  
16 the Fourteenth Amendment; and 4) there was insufficient evidence  
17 in violation of the Fourteenth Amendment.

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24       <sup>1</sup> Except for the requirement that appealable issues be  
25 specifically identified, the standard for issuance of a  
26 certificate of appealability is the same as the standard that  
applies to issuance of a certificate of probable cause.  
Jennings, 290 F.3d at 1010.

Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is issued in the present action.

Dated: September 16, 2005

/s/ Garland E. Burrell, Jr.  
GARLAND E. BURRELL, JR.  
United States District Judge